

1 BILL NO. S-85-03-08

2 SPECIAL ORDINANCE NO. S- 37-85

3 AN ORDINANCE ratifying a Reimbursement
4 Agreement between the City of Fort Wayne,
5 Indiana, by and through its Light and
6 Power Utility (the "City") and Fort
7 Wayne National Bank, Fort Wayne, Indiana,
8 (the "Bank").

9 WHEREAS, the City has participated in the downtown
10 Civic Center Hotel project and this Council has previously ap-
11 proved of such participation by the passage of Special Ordinance
12 S-265-83, as passed by the Common Council on the 20th day of
13 December, 1983 and signed by the Mayor on the 21st day of December,
14 1983; and

15 WHEREAS, as part of the City's participation, as pre-
16 viously approved by this Council, it has been necessary for the
17 City to enter into a Reimbursement Agreement with the Fort Wayne
18 National Bank, such Agreement executed February 4, 1984, but made
19 effective December 29, 1983, all as part of the City's partici-
20 pation and guarantee of payment as outlined in Special Ordinance
21 S-265-83; and

22 WHEREAS, this Ordinance is necessary to reconfirm and
23 ratify the City's involvement with respect to the downtown Civic
24 Center Hotel project, such involvement done for purposes of
25 economic development and redevelopment and for the benefit of this
26 community in general.

27 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
28 THE CITY OF FORT WAYNE, INDIANA:

29 SECTION 1. The Reimbursement Agreement of September 4,
30 1984 (effective date of December 29, 1983), by and between the
31 City and the Bank is hereby approved, confirmed and ratified in
32 all respects. A copy of said Reimbursement Agreement is attached
hereto as a part hereof and two (2) copies of same are on file
in the Office of the City Clerk and are available for public in-
spection.

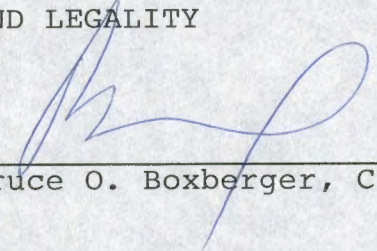
1 Page Two

2 SECTION 2. The exeuction of said Reimbursement Agree-
3 ment by the Mayor and the Board of Public Works and Safety is
4 hereby approved and the City is hereby obligated to follow all of
5 the terms and conditions of said Reimbursement Agreement.

6 SECTION 3. That this Ordinance shall be in full force
7 and effect from and after its passage and any and all necessary
8 approval by the Mayor.

9
10 
11 Councilmember

12 APPROVED AS TO FORM
13 AND LEGALITY

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15 Bruce O. Boxberger, City Attorney
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Fox River Bond
25% COTTON

Read the first time in full and on motion by Eisbart, seconded by Bradbury, and duly adopted, read the second time by title and referred to the committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ .M., E.S.

DATE: 3-12-85 Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Eisbart, seconded by Henry, and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	<u>1</u>	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GiaQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>HENRY</u>	<u>✓</u>	_____	_____	_____	_____
<u>REDD</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	_____	<u>✓</u>	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 3-26-85 Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE (RESOLUTION) NO. 1-37-85 on the 26th day of March, 1985,

ATTEST: (SEAL)
Sandra E. Kennedy Mark E. GiaQuinta
SANDRA E. KENNEDY, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of March, 1985, at the hour of 11:30 o'clock A.M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 28th day of March, 1985, at the hour of 11:30 o'clock A.M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR., MAYOR

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement dated September 4, 1984, but effective as of December 29, 1983, is entered into by and between THE CITY OF FORT WAYNE, INDIANA, a municipal corporation duly organized and existing under the laws of the State of Indiana, by and through its Light and Power Utility (the "City"), and FORT WAYNE NATIONAL BANK, a national banking association (the "Bank").

The City has agreed to issue and sell its City of Fort Wayne, Indiana Floating Rate Monthly Demand Industrial Development Revenue Bonds (Fort Wayne Center Associates Ltd. Project) 1983 Series, in the aggregate principal amount of \$10,000,000 (the "Bonds") pursuant to the Indenture of Trust dated as of December 1, 1983 (the "Indenture"), between the City and Indiana Bank and Trust Company of Fort Wayne, as trustee (the "Trustee"), and lend the proceeds from the issuance of the Bonds to FORT WAYNE CENTER ASSOCIATES, LTD., a limited partnership organized under the laws of the State of Indiana (the "Company") pursuant to a Loan Agreement entered into between the City and the Company and dated as of December 1, 1983 (the "Loan Agreement") for the sole and exclusive purpose of financing the costs of the acquisition, construction and installation by the Company of a hotel in Fort Wayne, Indiana (the "Project").

The BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association ("B of A") has agreed to issue an irrevocable letter of credit ("B of A Letter of Credit") in favor of the Trustee in an amount equal to the principal amount of the Bonds issued under the

Indenture, plus an amount equal to sixty five (65) days' accrued interest on the Bonds up to an aggregate amount of interest of \$357,000 plus an aggregate amount up to \$15,000 for discount on the remarketing of Bonds, subject to certain conditions, including the issuance by Bank of the irrevocable letter of credit in favor of B of A in support of all amount payable by Company to B of A pursuant to the Credit Agreement entered between B of A and Company as of December 1, 1983, and the Revolving Note executed by Company in favor of B of A on December 29, 1983, in the maximum amount of \$3,000,000.00.

In consideration of the following warranties and covenants made by the City hereunder, Bank agrees to issue its letter of credit ("Letter of Credit") in favor of B of A in the maximum amount of \$3,000,000.00, upon the terms and conditions to be negotiated between Bank and B of A.

I
TERMS

1. The City agrees that in the event Bank is required at any time to disburse funds to B of A under the Letter of Credit, the City shall reimburse the Bank in accordance with the terms and conditions of this Agreement.

2. In the event Bank is required to disburse under its Letter of Credit, the City shall reimburse Bank in the full amount of such disbursement within one hundred eighty (180) days from receipt by the City of written notice from Bank that a disbursement has been made under the Letter of Credit.

The City shall make such reimbursement to Bank in cash and in such manner as the City shall determine, which may include the issuance and sale by the City of its revenue bonds against the operating revenues of the City of Fort Wayne Light and Power Utility.

3. Upon receipt by the City of Bank's notice that a disbursement has been made under the Letter of Credit, the City shall immediately take such action as is required to place a valid lien in favor of Bank on all unencumbered net revenues of the City of Fort Wayne Power and Light Utility Fund. The term "unencumbered net revenues" shall be defined as the gross operating revenues of the City of Fort Wayne Power and Light Utility after payment of the sum of Two Hundred Seventy Five Thousand Dollars (\$275,000.00) per annum to the City Light Trust Fund and after annual payments to participants in the City of Fort Wayne Electric Light Utility Pension Plan. Such lien shall continue in favor of Bank until the Bank has been reimbursed in full by the City for Bank's payment under the Letter of Credit.

4. The City agrees that from the date of issuance of the Letter of Credit by Bank and thereafter for so long as City remains liable hereunder to Bank, the City shall not place or cause to be placed any other lien or encumbrance on the City Light and Power Utility Fund, or in any way commit, pledge or obligate the unencumbered net revenues from the City Light and Power Utility Fund, unless such other lien, encumbrance, commitment, pledge

or obligation is subordinate to the lien granted to Bank by the City under this Agreement. The City agrees that no other such lien, encumbrance, commitment, pledge or obligation shall be placed on the City Light and Power Utility Fund without City first providing the Bank with the written terms and conditions with respect to such proposed lien, encumbrance, commitment, pledge or obligation, and obtaining Bank's written consent to the same, which consent shall not be unreasonably withheld.

5. The parties agree that all sums due hereunder to Bank shall bear interest at a fluctuating interest rate per annum equal to eighty percent (80%) of the prime rate of Bank, as the same may change from time to time, which interest shall be payable monthly.

6. The City agrees that in the event appropriations may be required for the performance of any obligation by the City to Bank now or hereafter required by the terms of this Agreement, the City shall forthwith appropriate by Appropriation Ordinances the funds necessary for performance of any such obligation and shall take such other action as may from time to time be required to perfect Bank's interest and to perform the City's obligations hereunder, including but not limited to securing the necessary approvals from the Indiana State Board of Accounts, the Indiana State Board of Tax Commissioners, and any other local, state or federal governmental body having jurisdiction over the performance by the City of its obligations hereunder.

7. The City shall pay or cause to be paid to Bank an annual issuance fee in an amount equal to one and one-half percent (1-1/2%) of the

then outstanding maximum standby commitment hereunder, the first such annual issuance fee to be paid upon the date of issuance of the Letter of Credit by the Bank and annually thereafter on the anniversary date of the issuance of the Letter of Credit.

8. In the event the City fails to reimburse Bank in full for the disbursements made by Bank under the Letter of Credit within one hundred eighty (180) days from receipt of written notice of such disbursement, Bank may elect to require the City to assign to Bank any or all of the interests which the City has received from Company under the Standby Financing Agreement dated December 29, 1983, between the City and Company, including but not limited to the real estate mortgage on the Project and the promissory note of Company in favor of the City, and City shall forthwith take such action as may be required to effect such assignment to Bank.

9. Commencing with the audited financial statements of the City Light and Power Utility Fund currently being prepared by Coopers and Lybrand, which shall be delivered to Bank on or before September 1, 1984, the City shall furnish Bank annually during the term of this Agreement with a detailed audit of the City Light and Power Utility Fund which shall be prepared and certified by independent public accountants selected by the City and approved by Bank.

II CONDITIONS PRECEDENT

The obligation of the Bank to issue the Letter of Credit is subject to the following conditions:

The Bank shall have received:

1. The opinion of the City Attorney for the City in form satisfactory to counsel for Bank to the effect that the action to be taken by the City under this Agreement will grant to Bank the rights and interests to be granted Bank under the terms of this Agreement;
2. Bank shall have received the Reimbursement Note, a copy of which is attached hereto, executed by the City;
3. The issuance of the Bonds and the existence of each of the remaining financing mechanisms which are required to finance the Project, as described in the Credit Agreement dated December 29, 1983, between B of A and the Company.
4. Such other evidence, documents, instruments, approvals, and opinions as Bank may reasonably request, all of which shall be acceptable to Bank and counsel for Bank.

III

REPRESENTATIONS AND WARRANTIES

The City represents and warrants that:

1. Due Organization. The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Indiana, has all requisite power and authority to enter into the transactions described herein.
2. Authority. The execution, delivery and performance by the City of this Agreement and the Reimbursement Note are within the City's power.

3. No Violations. The City is neither in default under nor in violation of any indenture, mortgage, deed, lease, loan agreement, note, order, judgment, decree or other agreement or instrument or restriction of any kind or character to which it is party, by which it is bound, or to which it or any of its assets is subject, which default or violation would have a material adverse effect on the transactions contemplated by this Agreement and the Reimbursement Note which would materially and adversely affect its ability to comply with the terms of this Agreement. Neither the execution and delivery of this Agreement and Reimbursement Note, nor compliance with the terms, conditions and provisions of this Agreement and Reimbursement Note will conflict with or result in the breach of, or constitute a default under any of the foregoing.

4. Consents. No consent or approval is required to be obtained from, and no action need be taken by or document filed with, any local, state or federal governmental authority in connection with the execution, delivery and performance of this Agreement or, if any such action is required, the same has been duly taken, is in full force and effect, and constitutes valid and sufficient authority therefor.

5. No Litigation. Except for the two lawsuits filed by Iartnec Investment Company in the United States District Court for the Northern District of Indiana (designated as Civil No. F 84-162 and Civil No. F 84-163), which challenge the legality of the financing for the Project, there is no action, suit, proceeding or investigation at law, in equity, or before or by any public board of body, pending or, to the best knowledge of the City, threatened against

or affecting the City, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement or the validity of this Agreement or the Reimbursement Note, or which would materially adversely affect its ability to comply with the terms of this Agreement or the Reimbursement Note.

6. The City Light and Power Utility Fund currently receives \$1,490,000.00 annually from the Lease Agreement with Indiana & Michigan Electric Company. The only existing interests in the City Light and Power Utility Fund which are superior to the interests granted to Bank hereunder are (a) an annual payment of \$275,000.00 to the City Light Trust Fund, and (b) annual payments of approximately \$44,000 to participants in the City of Fort Wayne Electric Light Utility Pension Plan.

IV MISCELLANEOUS

1. Notices. Any communications between the parties hereto or notices provided herein to be given may be given by mailing the same, postage prepaid, to each party at the address set forth on the signature pages hereto, or to such other addresses or to the attention of such persons as either party may in writing hereafter indicate.

2. Binding Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that the City shall not assign this Agreement or any of its rights, duties or obligations hereunder without the prior written consent of Bank.

3. Waivers. No delay or omission by Bank to exercise any right under this Agreement shall impair any such right, nor shall it be construed to be a waiver thereof. No waiver of any single breach or default under this Agreement shall be deemed a waiver of any other breach or default.

4. Complete Agreement. This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail.

5. Governing Law. This Agreement, and any instrument or agreement required hereunder, shall be governed by, and construed under, the laws of the State of Indiana.

6. Amendments, Etc. No amendment, waiver, modification or release of any provision of this Agreement nor consent to any departure by the City therefrom shall in any event be effective, irrespective of any course of dealing with any of the parties hereto, unless the same shall be in writing and signed by the Bank, and then such amendment, waiver, modification or release shall be effective only in the specific instance and for the specific purpose for which given.

7. Indemnification. The City agrees to hold harmless and indemnify Bank from and against all claims, demands, lawsuits, judgments, costs and expenses, including reasonable attorney fees, which may hereafter arise,

either directly or indirectly, from the transactions contemplated in this Agreement and the Reimbursement Note, or the execution of either of the foregoing by the City and/or Bank.

8. Invalidity of Provisions. The provisions hereof shall, to the greatest extent possible, be interpreted in such manner as to comply with the applicable law, but if any provision hereof is, notwithstanding such interpretation, determined to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect and continue to be binding upon the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers, as of the day and year first above written.

Address:

Office of the Mayor
City-County Building
One Main Street
Fort Wayne, Indiana 46801

CITY OF FORT WAYNE, INDIANA, by and
through its Light and Power Utility,

By _____
Winfield C. Moses, Jr., Mayor

ATTEST:

Sandra E. Kennedy, Clerk

Address:

Commercial Loan Department
110 West Berry Street
Fort Wayne, Indiana 46802

FORT WAYNE NATIONAL BANK,

By _____
Vice President

BOARD OF PUBLIC WORKS AND SAFETY:

BILL NO. S-85-03-08

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) ratifying a Reimbursement Agreement
between the City of Fort Wayne, Indiana, by and through its Light
and Power Utility (the "City") and Fort Wayne National Bank, Fort
Wayne, Indiana (the "Bank")

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)

(~~RESOLUTION~~) DO PASS DO NOT PASS WITHDRAWN ~~DEFERRED~~
YES NO

B. A. Eisbart BEN A. EISBART
CHAIRMAN

Janet G. Bradbury JANET G. BRADBURY
VICE CHAIRWOMAN

Samuel J. Talarico SAMUEL J. TALARICO

Thomas C. Henry THOMAS C. HENRY

James S. Stier JAMES S. STIER

CONCURRED IN 3-26-85

SANDRA E. KENNEDY
CITY CLERK